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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

LADELL LAMONT SANDERS,

Defendant and Appellant.

C081395

(Super. Ct. No. 11F08401)

A jury convicted defendant Ladell Lamont Sanders of three counts of forcible rape (Pen. Code, § 261, subd. (a)(2))¹ and three counts of forcible oral copulation (§ 288a, subd. (c)(2)) with multiple victim findings (§ 667.61, subd. (e)(4)) as to all counts.

¹ Undesignated statutory references are to the Penal Code.

(*People v. Sanders* (Aug. 26, 2014, C073358) [nonpub. opn.].)² The trial court sentenced defendant to 90 years to life, consisting of consecutive 15 years to life terms on all six counts. (*People v. Sanders, supra*, C073358.) Defendant appealed, and we vacated the consecutive sentences as to all of the counts involving the same victim, remanded for the trial court to determine whether consecutive sentences should be imposed on those counts pursuant to section 667.6, subdivision (c), and affirmed the judgment in all other respects. (*People v. Sanders, supra*, C073358.)

On remand, the trial court imposed consecutive terms on the three counts again, for a total term of 90 years to life. As justification for imposing consecutive terms on the three counts, the trial court found that the crimes involved separate acts of violence and threats of violence, defendant's conduct showed a high degree of viciousness, and he had an increasingly serious record of criminal conduct.

On appeal, defendant contends that the trial court's decision to impose consecutive terms based primarily on the facts of the crimes violated the rule of *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435], and the court failed to award him custody credit for the time served following the original sentencing.

Defendant's first contention is foreclosed by United States Supreme Court precedent holding that the decision to impose consecutive terms is not subject to *Apprendi*. (*Oregon v. Ice* (2009) 555 U.S. 160, 163-164 [172 L.Ed.2d 517, 522].) Defendant recognizes that we must reject his claim, which he raises solely to preserve for review in the United States Supreme Court.

Defendant is correct regarding custody credits.

² We previously construed defendant's request to take judicial notice of our record in the prior appeal as a motion to incorporate that case by reference and granted the motion.

At the initial sentencing, defendant was awarded 527 days of presentence credit, consisting of 459 days of actual and 68 days of conduct credit. He was initially sentenced on March 15, 2013, a date that was included in the original award of credits. When defendant was resentenced on remand on February 19, 2016, the trial court did not award custody credit for the time served between the initial sentencing and resentencing. As the Attorney General correctly admits, this was in error. (§ 2900.1; *People v. Buckhalter* (2001) 26 Cal.4th 20, 23.) Defendant is thus entitled to credit for 1,071 days of actual time served in state prison between the March 15, 2013, sentencing and the February 19, 2016, resentencing.

DISPOSITION

The judgment is modified to reflect 1,071 days of credit awarded for the actual time defendant spent in state prison, in addition to the presentence credit previously awarded. We otherwise affirm the judgment. The trial court is directed to prepare an amended abstract of judgment reflecting the modified judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

NICHOLSON, J.

We concur:

RAYE, P. J.

DUARTE, J.